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Paper No. \_\_\_\_\_

IGOR TROITSKI  
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In re Application of  
Troitski  
Application No. 09/583,454  
Filed: May 30, 2000  
Docket No. N/a

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**OFFICE OF PETITIONS**

AND

DECISION ON PETITION

In re Application of  
Troitski  
Application No. 10/042,697  
Filed: February 20, 2002  
Docket No. n/a

This is a decision on the petition under 37 CFR 1.182 filed April 15, 2002, which is being treated as a petition under 37 CFR 1.53(e) requesting that the Continued Prosecution Application (CPA) filed under 37 CFR 1.53(d) February 20, 2001, based on prior application No. 09/598,454 be treated as an application filed under 37 CFR 1.53(b) and accorded a filing date of February 20, 2002

The petition is granted.

Since the prior application was filed on or after May 29, 2000, the provisions of 37 CFR 1.53(d) specifically exclude the prior application from CPA practice. See 37 CFR 1.53(d)(1)(I)(a). As such the improper CPA is to be treated as an RCE request. See MPEP 706.07(h)(V). However, as noted in MPEP 706.07(h)(V), under these circumstances, an applicant may file a petition under 37 CFR 1.53(e) and \$130 fee and request the improper CPA be treated as an application filed under 37 CFR 1.53(b). The petition is accompanied by what is being construed as a true copy of the prior application papers.

A new file wrapper has been prepared and assigned the application No. 10/042,697. All papers filed with the petition have been placed in this new file. The filing fees paid for the CPA in the parent case have been transferred to the new application.

The reference to the prior application in the CPA papers filed on February 20, 2001, has been construed as the timely request under 35 USC 120 and 37 CFR 1.78 for benefit of the prior application. Nevertheless, applicant must present at a later time an amendment to the first line of the specification which includes a claim for benefit of the prior application.

Application No. 09/583,454 is being forwarded to the Office of Publications for further processing into a patent.

Application No. 10/042,697 is being forwarded to the Office of Initial Patent Examination (OIPE) for further processing as an application filed under 37 CFR 1.53(b), with a filing date of February 20, 2002, using the copy of the prior application specification, claims, drawings, and the declaration filed April 15, 2002. Any questions relating to the initial processing of this application should be addressed to OIPE at (703) 308-1202. OIPE will issue a filing receipt for this application due course.

Telephone inquiries related to this decision should be directed to the undersigned at (703) 305-1820.



Brian Hearn  
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for Patent Examination Policy